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Case No. 91270-0

THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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CLAIRE C. WOODWARD,  
a single individual,

Appellant,

v.

AVA A. TAYLOR and "JOHN DOE" TAYLOR, wife and  
husband, and THOMAS A. KIRKNESS and "JANE DOE"  
KIRKNESS, husband and wife,

Respondents.

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RESPONDENT SUPPLEMENTAL BRIEF

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 ORIGINAL

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## I. INTRODUCTION

This case arises out of a motor vehicle accident which occurred in Idaho. After Idaho's two year statute of limitations deadline had passed, Woodward filed an action in Washington against Taylor and Kirkness (the owner of the vehicle driven by Taylor).

In her complaint, Appellant Woodward (Plaintiff below) alleged that:

"The posted speed limit was 75 m.ph."

That Idaho speed limit conflicts with the maximum speed limit under Washington law of 60 m.p.h.

In their answer, Respondents Taylor and Kirkness (Defendants below) pleaded, as an affirmative defense, that the action was barred Idaho's two year statute of limitations. That statute of limitations conflicts with Washington's three year statute of limitations.

Thus, from the earliest pleadings, the parties and the Trial Court were on notice of actual conflicts between Idaho and Washington law.

Taylor and Kirkness filed a Motion for Summary Judgment, asking the Trial Court to dismiss the action, based upon the Idaho

two year statute of limitations. In briefing submitted prior to the Trial Court's order, Taylor and Kirkness pointed out several additional actual conflicts between Washington law and Idaho law, including the maximum speed law, family car doctrine, comparative negligence, and negligence per se.

The Trial Court observed that there was an allegation of speeding. The Trial Court observed that speeding has to be based upon the rules of the road where the accident occurred; it has to be based on the traffic laws of the state of Idaho. The Trial Court stated that the traffic laws of the state of Idaho are different and in conflict with the traffic laws of the state of Washington.

The Trial Court dismissed Woodward's claims against Taylor, pursuant to Idaho's two year statute of limitations.

Woodward filed an appeal to the Court of Appeals. The Court of Appeals affirmed the ruling of the Trial Court, dismissing Woodward's claims against Taylor.

Woodward filed an appeal to this Court.

RCW 4.18.020 controls the selection between conflicting statutes of limitation. Woodward asserts an argument which circumvents RCW 4.18.020 and permits forum shopping to avoid Idaho's statute of limitations.

## II. ASSIGNMENT OF ERROR

Respondents make no assignment of error. The issues are as follows:

1. In choosing between two statutes of limitations, is a methodology which facilitates forum shopping consistent with the purpose of RCW 4.18.020 and consistent with policies announced by this Court?

Answer: No. The methodology proposed by Appellant facilitates forum shopping, is contrary to the purpose of RCW 4.18.020, and is contrary to policies stated by this Court.

2. In determining which state's substantive law forms the basis for the plaintiff's claim, as required by RCW 4.18.020, must the Court determine if there are additional actual conflicts of law, in addition to the conflicting statutes of limitations?

Answer: No. Under RCW 4.18.020, the duty of the Court is to determine which state's substantive law the plaintiff's claim is based upon. This is done without regard to whether there are additional actual differences in the law.

3. Was there a showing of additional actual conflicts of law in this case?

Answer: Yes. Plaintiff's complaint disclosed an actual

conflict of law, Defendant's answer disclosed another actual conflict of law, and Defendant's briefing disclosed additional actual conflicts of law, prior to the Trial Court's order.

### **III. STATEMENT OF THE CASE**

This motor vehicle accident occurred in Idaho on March 27, 2011. CP 2, Plaintiff's Complaint, Lines 12-15. CP 3, Plaintiff's Complaint, Lines 7-8.

On May 8, 2013 Woodward filed her complaint against Taylor and Kirkness in Washington. CP 1. Woodward alleged that the accident occurred in Idaho. CP 2, Plaintiff's complaint, Lines 12-14. Woodward alleged that:

" The posted speed limit was 75 m.p.h."

CP 3, Plaintiff's Complaint, Lines 14-15.

The statute of limitations for a personal injury action under Idaho law is two years. See Idaho Code § 5-214.

In their Answer to Woodward's Complaint, Taylor and Kirkness alleged, as an affirmative defense, that Plaintiff failed to commence the action within the time required by statutes of the state of Idaho. CP 10, Answer, lines 15-16.

Taylor and Kirkness filed a Motion for Summary Judgment, asking for dismissal, on the grounds of the Idaho statute of limitations. CP 19, CP 29, lines 6-18.

Taylor and Kirkness submitted briefing regarding conflicts between Washington law and Idaho law on a number of issues. These included statute of limitations, maximum speed law, family car doctrine, comparative fault and negligence per se. CP 82, Defendants Reply In Support of Summary Judgment, Page 84 Line 13 through Page 85 Line 11.

The Trial Court began its analysis by looking to RCW 4.18.020. The Court observed that if a claim is substantively based upon the law of another state, the limitation period of that state applies.

The Trial Court observed that there was an allegation of speeding. The Trial Court observed that the speeding has to be based on the rules of the road where the accident occurred; it has to be based upon the traffic laws of the state of Idaho. The Trial Court observed that traffic laws of the state of Idaho are different and in conflict with the traffic laws of the state of Washington.

VRP Page 27, Line 2 -Page 28 Line 9.

The Trial Court granted the motion to dismiss Taylor and denied the motion to dismiss Kirkness. CP 116.

Appellant Woodward thereafter filed an appeal to the Court of Appeals. CP 117. The Court of Appeals affirmed the Trial Court.

Appellant filed her appeal to this Court.

#### **IV. ARGUMENT**

##### **1. Standard of Review**

The Standard of Review is *de novo*. *Rice v. Dow Chemical Company*, 124 Wn.2d 205, 875 R.2d 1213 (1994).

##### **2. The Purpose of RCW 4.18.020 Is To Eliminate Forum Shopping.**

###### **A. Traditional Approach and Criticisms**

Traditionally, Courts were free to apply their own statute of limitations to any claim over which the Court had jurisdiction, regardless of the forum's relationship to the claim and regardless of the substantive law which governed the claim. Christopher R. M. Stanton, Note, *Implementing The Uniform Conflict of Laws-Limitation Act in Washington*, 71 Wash. L. Rev. 871 (1996).

Both commentators and courts recognized the inequitable and often inefficient results of this traditional approach. *Id*, See

also *Heavner v. Uniroyal, Inc.*, 305 Atlantic 2d 412, 415-16 (N.J. 1973).

The traditional approach encouraged forum shopping. *E. Scoles and P. Hay, Conflict of Laws* at 60 (1982). See also, Shawn B. Jensen, *Legislative Developments in Conflict of Laws: Washington Adopts the Uniform Conflict of Laws – Limitations Act*, 20 Gonzaga Law Rev. 291 at 293. A claim which would be barred if the action were brought in one state may not be barred if the action is brought in a state with the longer limitations. Thus, "delay – prone" plaintiffs search for the forum with the longest limitation. 20 Gonzaga Law Rev. 291 at 293.

These problems led the National Conference of Commissioners on Uniform State Laws to propose the Uniform Conflict of Laws – Limitations Act. The Uniform Act set forth a consistent and rational method for selecting a statute of limitations in a conflict situation. It provided for the application of the statute of limitations of the state upon whose law the claim is substantively based. *Uniform Conflict of Laws – Limitation Act 2(a)(1)*, 12 U.L.A. 61-63 (Supp. 1994). See also, 71 Wash. L. Rev. 871 at 873.

The goal of the Uniform Act was to tie the limitation period to the law upon which the case is substantively based. *Robert A.*

*Leflar, Choice - of – Law Statutes*, 44 Tenn. L. Rev. 951, 961 (1977); See also, 71 Wash. L. Rev. 871 at 878. By taking this approach, forum shopping is precluded.

### **B. Washington Policy Against Forum Shopping**

Washington has a strong policy against forum shopping. In *Re Marriage of Verbin* 92 Wn.2d 171, 184, 595 P.2d 905 (1979); *W.G. Clark Construction Company v Pac. NW. Reg'l Council of Carpenters*, 181 Wn.2d 54, 61, 322 P.3d 1207 (2014).

Another example of this policy, particular to statutes of limitations, is RCW 4.16.290. That statute provides:

“ When the cause of action has arisen in another state, territory or country between nonresidents of this state, and by the laws of the state, territory or other country where the action arose, an action cannot be maintained thereon by reason of the lapse of time, no action shall be maintained thereon in this state.”

### **C. Washington Adopts Uniform Act**

In 1983, Washington adopted the Uniform Conflicts of Laws-Limitation Act. There was no testimony or argument against the bill, and the arguments for the bill were uniformity and prevention of forum shopping. *H.R. Rep., H.B. 925*, 48<sup>th</sup> Leg. (1983). See also, 71 Wash. L. Rev (1996), *supra*, note 65.

Pursuant to RCW 4.18.020, the statute of limitations that

applies to a particular suit is that of the same state as the substantive law controlling the suit. 20 Gonzaga Law Rev. 291, *supra*, at 292 note 6.

#### **D. Proper Procedure For Determining Which Statute of Limitations Applies**

The methodology for determining which statute of limitations applies was set forth in *Rice v. Dow Chemical Company*, 124 Wn.2d 205, 875 P.2d 1213 (1994). The Court described the first step as follows:

Under this Act, the "borrowing statute", RCW 4.18.020, indicates that there is first a determination of which state's substantive law applies... "

*Rice* describes the second step as follows:

"After the forum chooses the substantive law of another state, then that state's limitation period will apply. See 15 Lewis H. Orland & Karl B. Tegland, Wash. Prac. *Trial Practice* § 433, at 145 (1986)."

*Rice* went on to note:

"As stated by the comment to the Act relating to this provision, limitation periods are "to be governed by the limitations law of a state whose law governs other substantive issues inherent in the claim. Unif. Conflict of Law-Limitations Act § cmt., 12 U.L.A. 63 (Supp. 1994)."

### **3. Appellant's Methodology Promotes Forum Shopping**

In determining which statute of limitations applies,

Woodward asserts that, first, there must be a showing of additional actual conflicts between the law of Washington and Idaho.

The methodology proposed by Woodward permits a party to engage in forum shopping. To illustrate this, assume a hypothetical situation with the same facts as the case at bar, except that the accident and the injury occurred in a state other than Idaho. Assume that the injury state has a two year statute of limitation, and Washington has a three year statute. Assume that other than a difference in the statute of limitations, the law of Washington and the law of the injury state are the same.

Under Woodward's methodology, the Court must first determine if there is any additional actual conflict between the laws of Washington and the laws of the injury state, over and above the conflict of law regarding the statute of limitations.

In the hypothetical, there is a conflict of law. The two year statute of limitations of the injury state conflicts with the three year Washington statute of limitations.

Woodward argues that this conflict is not enough, and additional actual conflicts must be shown. In the hypothetical, no other conflict of law exists. Woodward asserts that, because there is no other conflict, Washington law automatically applies.

Under Woodward's methodology, the Court never determines which state's substantive law forms the basis of the claim, as required by RCW 4.18.020. The court never ties the statute of limitations to the law upon which the claim is substantively based. Instead, Washington law is applied without any consideration of which state has the most significant contacts. Washington law is applied without considering the interests of Washington and the injury state. In the hypothetical, the party is successful in forum shopping for a more liberal statute of limitations.

Under Woodward's methodology, the limitation period would be governed by the limitation law of the forum state, Washington. This would be contrary to the statement in *Rice* that:

"...Limitation periods are "to be governed by the limitations law of a state whose law governs other substantive issues inherent in the claim ."

See *Rice* at 124 Wn.2d at 211.

**4. Woodward's Claim is Based Upon the Substantive Law of Idaho.**

**A. Guiding Factors**

Under RCW 4.18.020, a Court must determine which state's substantive law forms the basis of the plaintiff's claims. *Rice v. Dow Chemical*, 124 Wn.2d 205, 210, 875 P.2d 1213 (1994). In making this determination, Washington follows the Restatement (Second) of Conflict of Laws § 145 (1971). See *Rice*, 124 Wn.2d at 213.

Washington also follows the Restatement (Second) of Conflict of Laws § 6 (1971). See *Rice*, 124, Wn.2d at 213.

Washington also looks to Restatement (Second) of Conflicts of Laws § 146. *Bush v. O'Connor*, 58 Wn.App.138, 791 P.2d 915 (1990). The Restatement (Second) Conflicts of Laws § 146 states as follows:

"In an action for personal injury, the local law of the state where the injury occurred determines the rights and liabilities of the parties, unless, with respect to the particular issue, some other state has a more significant relationship under the principals stated in § 6 to the occurrence and the parties, in which event the local law of the other state will be applied."

#### **B. Washington Cases**

In *Rice v. Dow Chemical Company*, 124 Wn.2d 205, 875 P.2d 1213 (1994) this Court determined that Oregon's substantive law would apply, even though the Plaintiff resided in Washington.

The *Rice* Court evaluated which state had the most significant contacts. Rice argued that he was a resident of Washington, and Washington had an interest in "seeing to it that its residents are compensated for personal injuries". *Rice*, 124 Wn.2d at 216.

The *Rice* Court indicated that residency was not an overriding concern. At page 216 of 124 Wn.2d, this Court stated:

"Although this is a real interest, recognizing this as an overriding concern, despite the lack of contacts, would mean that Washington law would be applied in all tort cases involving any Washington resident, regardless of where all the activity relating to the tort occurred. Furthermore, residency in the forum state alone has not been considered a sufficient relation to the action to warrant application of forum law.

*Rice* concluded that Oregon law would apply to the substantive claims in that case. As a result, the Oregon statute of repose applied, and barred Plaintiff's claim. *Rice* held that Oregon's statute of limitations applied, as well. *Rice*, 124 Wn.2d at 217.

In *Ellis v. Barto*, 82 Wn. App. 454, 918 P.2d 540 (1996), Washington residents collided while driving in Idaho. *Ellis* commenced an action for personal injuries in the Washington. Defendants moved for dismissal, contending that Idaho's statute of

limitations barred the action. The trial court granted the motion. *Ellis* appealed to the Court of Appeals.

The *Ellis* Court observed that differences in limitation periods are not subject to conflict of law methodology. Rather, those differences are determined pursuant to RCW 4.18.020. With regard to that statute, *Ellis* stated:

"It provides that if a claim is substantively based upon the law of another state, the limitation period of that state applies. RCW 4.18.020(1)(a)"

In determining which state's substantive law applied, *Ellis* followed the most significant relationship rule. *Ellis* went on to state:

"Therefore in personal injury actions, the substantive law of the state where the injury occurs applies, unless with respect to the particular issue, some other state has a more significant relationship to the occurrence and the parties. *Bush v. O'Connor*, 58 Wn.App. 138, 144, 791 P.2d 915 (citing Restatement (Second) of Conflict of Laws § 146 (1971)), review denied, 115 Wn.2d 1020 (1990)."

*Ellis* determined that the substantive law of the state of Idaho should apply. The Court's reasoning was as follows:

"Based on the relevant factors, we find that Washington did not have a more significant relationship to the accident at issue than Idaho. Every state has adopted rules of the road which govern the responsibilities and liabilities of those driving within its

boundaries and most drivers expect to be bound by those rules. When an accident occurs, the purpose of these rules and the policies behind them are best achieved by applying local law. Although a forum state has an interest in protecting its residents generally, as well as establishing requirements for licensing, registering, and insuring motor vehicles and drivers domiciled within the state, such interest does not extend so far as to require application of the forum state's rules of the road to an accident not occurring within its boundaries. Idaho has the most significant relationship to the driving conduct at issue and the rights and liabilities of the parties with respect to their violation or adherence to the rules of the road."

The *Ellis* rationale makes sense. It is not uncommon to have a vehicle carrying Washington residents, another vehicle carrying Canadian residents, and another vehicle carrying Montana residents, sharing Idaho roads with Idaho residents. A policy which would apply different rules of the road to each of these different vehicles, while driving on Idaho roads, would create confusion for drivers and increase the probability of accidents and injuries. The goals of promoting safety and providing clear guidance to drivers can only be achieved if all vehicles on the road are subject to the "rules of the road" of one state, rather than multiple states.

The *Ellis* decision was cited with approval in the case of *Martin v. Goodyear Tire and Rubber Co.*, 114 Wn.App. 823, 61 P.3d 1196, (2003).

In *Martin*, the Court stated:

"... where a defendant's violation of the local tort laws or rules of the road is at issue, courts tend to apply the law of the injury state, even if only one or neither of the parties is a resident.

In light of *Rice*, *Ellis*, and *Martin*, it is clear that Woodward's claims are based upon the substantive law of Idaho. This is consistent with the comment (d) of the Restatement (Second) Conflict of Laws § 145. The comment states:

"So, for example, a state has an obvious interest in regulating the conduct of persons within its territory and in providing redress for injuries that occurred there. Thus, subject only to rare exceptions, the local law of the state where the conduct and injury occurred will be applied to determine whether the actor satisfied minimum standards of acceptable conduct and whether the interest affected by the actor's conduct was entitled to legal protection"

This is particularly true when both the conduct causing injury and the injury itself occur in the same state. Comment (d) of the Restatement (Second) Conflict of Laws § 146 states:

"... In the majority of instances, the actor's conduct, which may consist either of action or non-action, and the personal injury will occur in the same state. In such instances, the local law of the state will usually

be applied to determine most issues involving the tort. The state will usually be the state of dominant interest, since the two principle elements of the tort, namely, conduct and injury, occurred within its territory. The state where the defendants' conduct occurs has the dominant interest in regulating it and in determining whether it is tortuous in character. Similarly, the state where the injury occurs will, usually at least, have the dominant interest in determining whether the interest affected is entitled to legal protection... "

**5. Actual Conflicts of Law Were Shown at the Trial Court.**

Actual conflicts of law were shown before the Trial Court issued its Order of Dismissal.

The complaint specifically mentioned the posted Idaho speed limit of 75 m.p.h, which, of course, is higher from the speed limit for the state of Washington, 60 m.ph.

The answer filed by Taylor and Kirkness alleged the affirmative defense of failure to commence the action within the time limit required by the statutes of the state of Idaho. CP 16, Lines 17-18.

In briefing submitted prior to the Trial Court's order, Taylor and Kirkness pointed out actual conflicts of law between Washington and Idaho. CP 84, Reply In Support of Summary Judgment, Line 13 through Page 85 Line 11. This included

conflicts of law on issues of the statute of limitations, family car doctrine, comparative fault, negligence per se and maximum speed law.

At the summary judgment hearing, the Trial Court held that the traffic laws of the state of Idaho were different and in conflict with the state of Washington.

VRP Page 27, Line 2-Page 28, Line 9.

#### **V. CONCLUSION**

RCW 4.18.020 controls the selection between conflicting statutes of limitations. Woodward seeks to circumvent the statute by asserting a new methodology for determining which statute of limitations should apply. Under that methodology, a court is precluded from determining which state's substantive law forms the basis for the claim. Under that methodology, Washington law is applied without any consideration for which state has the most significant contacts and without any consideration of the respective interests of Washington and Idaho.

Woodward asserts that additional actual conflicts of law between Washington and Idaho must be shown, over and above the conflicting statutes of limitation. That argument is unavailing;

in this case, several additional actual conflicts of law were, in fact, shown prior to the Trial Court issuing its order of dismissal.

Respondents, Taylor and Kirkness, respectfully request that this Court affirm the Court of Appeals decision dismissing Woodward's claims against Taylor.

RESPECTFULLY SUBMITTED this 31 day of July, 2015.

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### Certificate of Service

Pursuant to RAP 5.4(b) I, Kim N. Keeton, the undersigned, certify and declare under penalty of perjury under the laws of the State of Washington that the following statements are true and correct.

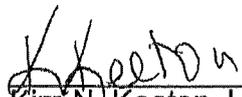
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED at Seattle, Washington, this 31 day of July, 2015.

  
\_\_\_\_\_  
Kim N. Keeton, Legal Assistant  
To Mark S. Cole

## OFFICE RECEPTIONIST, CLERK

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Good morning. Please find attached the following for filing on the above referenced matter:

- Respondent's Supplemental Brief
- Table of Contents
- Table of Authorities
- 1. Certificate of Service

Please do not hesitate to contact me should you have any questions, comments or concerns to this regard.

Thank you, and have a great day.

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